

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
 v.) Case No.: 13-00279-01-CR-W-DW
)
)
MARK L. FLAAEN,)
)
Defendant.)

**MEMORANDUM OF MATTERS DISCUSSED AND
ACTION TAKEN AT PRETRIAL CONFERENCE**

Pursuant to the order of the Court en banc of the United States District Court for the Western District of Missouri, a pretrial conference was held in the above-entitled cause before me on September 7, 2016. Defendant Flaaen appeared in person and with appointed counsel John Osgood. The United States of America appeared by Assistant United States Attorney Rudolph Rhodes.

I. BACKGROUND

On April 30, 2014, a Superseding Indictment was returned charging Defendant with one count of being a felon in possession of ammunition, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e)(1), one count of possession of methamphetamine, in violation of 21 U.S.C. § 844(a), two counts of aiding and abetting a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2) and 2, and one count of possession of a stolen firearm, in violation of 18 U.S.C. §§ 922(j), 924(a)(2) and 2.

The following matters were discussed and action taken during the pretrial conference:

II. TRIAL COUNSEL

Mr. Rhodes announced that he will be the trial counsel for the government. The case

agent to be seated at counsel table is Detective Loran Freeman, Independence, Missouri Police Department.

Mr. Osgood announced that he will be the trial counsel for Defendant Flaaen; Sharon Barr, paralegal, will assist.

III. OUTSTANDING MOTIONS

There are no pending motions in this case.

IV. TRIAL WITNESSES

Mr. Rhodes announced that the government intends to call 28 witnesses without stipulations or 16 witnesses with stipulations during the trial.

Mr. Osgood announced that Defendant Flaaen intends to call 14 witnesses during the trial. Defendant may testify.

V. TRIAL EXHIBITS

Mr. Rhodes announced that the government will offer approximately 61 exhibits in evidence during the trial.

Mr. Osgood announced that Defendant Flaaen will offer approximately 14 exhibits in evidence during the trial.

VI. RULE 404(b) EVIDENCE

Mr. Rhodes announced that the government will offer 404(b) or res gestae evidence during the trial.

Mr. Osgood announced that Defendant Flaaen will not offer 404(b) or res gestae evidence during the trial.

VII. DEFENSES

Mr. Osgood announced that Defendant Flaaen will rely on the defense of general denial.

VIII. POSSIBLE DISPOSITION

Mr. Osgood stated this case may be for trial, as the parties are negotiating a plea agreement.

Mr. Rhodes stated the government had proposed a plea agreement to the defendant.

IX. STIPULATIONS

Stipulations are likely as to Defendant's prior felony conviction and the interstate nexus of the firearm.

X. TRIAL TIME

Counsel were in agreement that this case will take 3 ½ days to try.

XI. EXHIBIT LIST, VOIR DIRE AND INSTRUCTIONS

The U. S. Magistrate Judge ordered:

That, in addition to the requirements of the Stipulations and Orders filed January 13, 2015, counsel for each party file and serve a **list of exhibits** he intends to offer in evidence at the trial of this case on the form entitled Exhibit Index and have all available exhibits premarked using the stickers provided by the Clerk of Court by **September 7, 2016**;

That counsel for each party file and serve requested jury **voir dire** examination questions by or before noon, Wednesday, **September 14, 2016**;

That counsel for each party file and serve, in accordance with the requirements of Local Rule 51.1, requested **jury instructions** by or before noon, Wednesday, **September 14, 2016**. Counsel are requested to provide proposed jury instructions in both hard copy form, as required by Local Rule 51.1, and by e-mail to the trial judge's courtroom deputy.

That counsel for each party file all **signed stipulations** by or before noon, Wednesday, **September 14, 2016**;

That **seven days before the trial date** as reflected in the forthcoming trial letter, if there is not a scheduled change-of-plea hearing, the parties shall make available for the opposing party to inspect, copy or photograph (1) **all premarked trial exhibits**, (2) **any written statements that will be used at trial**, and (3) **Rule 404(b) and res gestae evidence to be offered at trial**.

XII. UNUSUAL QUESTIONS OF LAW

Defendant will file motions in limine regarding Rule 404(b) and res gestae evidence, Defendant's prior convictions, the viability of a charge for aiding and abetting another to possess a firearm, and the Government calling Defendant's mother as a witness and the exercise of her 5th Amendment rights.

XIII. TRIAL SETTING

All counsel and Defendant were informed that this case will be listed for trial on the joint criminal jury trial docket which commences on September 19, 2016. Either week is acceptable to both sides.

/s/ Robert E. Larsen
ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
September 7, 2016
cc: Mr. Kevin Lyon